IN THE

Supreme Court of the United States

October Term, 1960

No. 84

In the Matter

of

ALBERT MARTIN COHEN, an Attorney,

Petitioner,

—v.—

DENIS M. HURLEY,

Respondent.

BRIEF, *AMICUS CURIAE*, OF THE CO-ORDINATING COMMITTEE ON DISCIPLINE CREATED BY THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, THE NEW YORK COUNTY LAWYERS' ASSOCIATION AND THE BRONX COUNTY BAR ASSOCIATION, IN SUPPORT OF RESPONDENT

HENRY WEINER
Attorney for David W. Peck, Jacob Burns and Harry Lesser,
as members of the Co-ordinating
Committee on Discipline
100 Centre Street
New York 13, New York

ALLEN HARRIS
DANIEL J. McMAHON
With him on the brief

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Statement of Interest

In the exercise of its inherent power to supervise the professional conduct of attorneys, the Appellate Division of the Supreme Court of the State of New York, First Department, by order made and entered on February 3, 1959, authorized and directed the Co-ordinating Committee on Discipline, created by the Association of the Bar of

the City of New York, the New York County Lawyers' Association and the Bronx County Bar Association, comprised of David W. Peck, Jacob Burns and Harry Lesser, to make a continuous examination and study of the statements of retainer and closing statements filed in the First Department by attorneys retained to prosecute claims for damages for personal injuries resulting from accidents, for the purpose, among other things, of observation, consideration and, where necessary, correction of the professional conduct of attorneys and those employed by or associated with them in the handling of personal injury claims. A preliminary report of the work of the Co-ordinating Committee is contained in an address delivered on November 5, 1959 by Jacob Burns to the New York County Lawyers' Association which was reprinted in greater part in the New York Law Journal of December 3rd and 4th, 1959 and this reprint is appended hereto as Appendix I.

The massive scope of the problem is indicated by the fact that presently approximately 150,000 such statements of retainer in accident cases, as well as approximately 50,000 closing statements, are filed annually in the First Department which includes the Counties of New York and Bronx.

The Co-ordinating Committee on Discipline has obtained the consent of the parties to this appeal to file a brief, *amicus curiae,* believing that the question presented to this court is one of great public importance. We support the position of the respondent here, as we did in the court below.

Opinions Below

Petitioner was duly admitted to practice as an attorney in the courts of New York in 1922, and during the period from 1954 to 1958 filed 304 statements of retainer in negli-

gence cases, either in his name or the name of his firm (Cohen and Rothenberg). He was duly subpoenaed to testify before the Judicial Inquiry into the practices of attorneys in negligence cases being conducted under the supervision of the Appellate Division, Second Department, and to produce his records with respect to such cases before the Justice designated to conduct such inquiry. He appeared at two separate hearings, and on the advice of his counsel invoked his constitutional privilege against self-incrimination, and refused to answer numerous pertinent questions on that ground, and refused to produce his records. It is not disputed that petitioner asserted his constitutional privilege in good faith and that as a citizen has a perfect right to do so. The facts are virtually conceded by the parties to this appeal.

Petitioner asserted the privilege against self-incrimination approximately 68 times in refusing to answer questions addressed to his professional conduct, for example: his association with other attorneys; whether he used laymen to settle negligence cases for him; the number of employees in his law office; whether he paid police officers, hospital and/or prison employees for referring negligence cases to him; whether he knew or had relationships with eight specific laymen, and whether he employed so-called "runners" to solicit retainers of personal injury claims.

Since an attorney-at-law owes a duty, as an officer of the court, to account for his professional conduct when an appropriate inquiry is made with respect thereto by an order of the Appellate Division, and petitioner having refused to do so, disciplinary proceedings were brought against him. His answer admitted the facts set forth in the petition in said proceeding and merely contested the legal consequence thereof, contending that there was no basis for any disciplinary action.

The Appellate Division rendered a decision (one Justice dissenting) disbarring petitioner unless within thirty days after the entry of said order he answered before the Justice presiding at the Judicial Inquiry all relevant questions and produced before such Justice all relevant records in accordance with the subpoena *duces tecum*. Petitioner elected not to answer the questions put or produce the records sought within the thirty day period hereinabove mentioned, and appealed the aforementioned order to the Court of Appeals. The Court of Appeals rendered a decision affirming the order of the Appellate Division (one Justice dissenting).

Summary of Argument

First, we contend that this appeal should be dismissed for lack of a substantial federal question since, in the state court proceedings below, petitioner was not deprived of due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

However, in the event this Court believes that a substantial federal question is involved, we contend that the decision of the court below should be affirmed for the following three reasons:

1. The character of an attorney-at-law and his fitness to continue his membership at the Bar are always "at issue." In the State of New York the privilege to practice law is granted by the Appellate Division of the Supreme Court, and whenever the Appellate Division, based on facts presented to it, deems that an attorney no longer possesses that high degree of character and fitness requisite in an attorney-at-law it can take that privilege away. While it is not disputed that an attorney, as any other citizen, has

the right to invoke his constitutional privilege against self-incrimination, he nevertheless, by so doing, can create such a cloud as to his character and fitness to continue as a member of the Bar, that the Appellate Division which, in the final analysis, is charged by the provisions of Section 90(2) of the Judiciary Law of the State of New York with the duty of maintaining the purity of the Bar, and has the inherent power to do so, may in a particular case, as it did here, determine that the conduct of the attorney in refusing to answer pertinent questions put to him by a duly authorized Judicial Inquiry, such as whether the attorney, who handled a large volume of negligence cases, hired or paid so-called "runners" to "chase" and solicit for him retainers of personal injury claims, and whether he paid police officers, hospital and/or prison employees for referring such cases to him, constituted professional misconduct warranting disbarment.

2. Petitioner was not disbarred without due process of law. The court did not appoint a Referee in the disciplinary proceeding to conduct an adversary-type hearing, because the answer of the petitioner in the disciplinary proceeding admitted all of the allegations of fact alleged against him. Inasmuch as a Referee in a disciplinary proceeding is charged only with the duty to hear and report the facts, the court below had no issues of fact to refer to a Referee. It is up to the court to determine whether the facts in any particular disciplinary proceeding justify the disciplining of an attorney and the extent of such discipline.

3. Disbarment of petitioner by the court below was not absolute; he was given a further opportunity to answer, within a period of thirty days, the questions put to him, and if he co-operated, he was granted leave to apply to vacate the order of disbarment.

ARGUMENT

POINT I

This appeal should be dismissed for lack of a substantial Federal question.

The Appellate Division of the Supreme Court of the State of New York, which admitted petitioner to practice had the right at all times to inquire into his continuing fitness to practice.

The inherent power of a State to regulate the admittance, supervision and control of attorneys is well established. *Gair* v. *Peck*, 6 N. Y. 2d 97 (1959) cert. denied 361 U. S. 374.

Mr. Justice Frankfurter of this Court stated in *Theard* v. *United States*, 354 U. S. 278, 1 L. ed. 2d 1342, 77 S. Ct. 1274 (1957), at page 281:

> "It is not for this Court, except within the narrow limits for review open to this Court, as recently canvassed in Konigsberg v. State Bar of California, 353 U. S. 252, L. ed. 2d 810, 77 S. Ct. 722, and Schware v. Board of Bar Examiners, 353 U. S. 232, 1 L. ed. 2d 796, 77 S. Ct. 752, to sit in judgment on . . . disbarments. . . ."

These narrow limits were defined by Mr. Justice Black of this Court in the case of *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, 1 L. ed. 2d 796, 77 S. Ct. 752 (1957), to mean at pages 238 and 239:

> "A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment . . ."

As Professor Bennett of the University of Utah stated in 46 A. B. A. J. 705 (July 1960):

"So traditional has been the exercise of control by a state over admission to its Bar and the subsequent surveillance of admitted practitioners that reference to constitutional premises is seldom made. Sanctioned by the historical development of our federalist system, by reason of reserved powers not explicitly or impliedly granted to the federal authority, and because the attorney is in the highest sense an officer of the court in the general administration of justice, the practice of law has been subjected to regulation by the state in the public interest."

All of the arguments hereinbelow made with respect to Point II apply with equal force to Point I, since, if the petitioner was not deprived of due process of law, there is lack of a substantial federal question.

POINT II

Petitioner was not deprived of due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

(a) The record below in the instant case demonstrates convincingly that there was no lack of due process.

Petitioner was summoned before a Judicial Inquiry being conducted under the supervision of the Appellate Division, Second Department, of the Supreme Court of the State of New York. The power of the State of New York to regulate the admittance, supervision and control of attorneys is vested by statute, §90(2) of the Judiciary Law of the State of New York, in the Appellate Divisions of the Supreme Court of the State of New York. The scope of the Judicial Inquiry below is set out very specifically in the order of the Appellate Division, Second Department, of January 21, 1957 to be (R. 19):

"(1) With respect to the alleged improper practices and abuses by attorneys and counselors-at-law in Kings County, and by persons acting in concert with them, as alleged in said petition;

"(2) With respect to alleged corrupt and unethical practices, including the practice of solicitation in obtaining retainers and in the subsequent prosecution and disposition of claims and actions;

"(3) With respect to any other practice involving professional misconduct, fraud, deceit, corruption, crime and misdemeanor, by attorneys and by others acting in concert with them; and

"(4) With respect to any and all conduct prejudicial to the administration of justice by attorneys and others acting in concert with them; and it is further . . ."

In other words, the judicial investigation here undertaken was not into any attorney's unorthodox political beliefs or political associations or into any attorney's opinions about matters of public interest or any attorney's defense of politically unpopular causes or defendants.

At petitioner's first appearance before the Judicial Inquiry on October 28, 1958, he was given a copy of the abovementioned order authorizing the inquiry by the Judge presiding, as appears from the court reporter's notes (R. 23). Before any questions were asked of petitioner, the Judge presiding, after petitioner had finished examining the order, had the following conversation with petitioner (R. 23):

"The Court: If there is any question you want to ask feel free to do it. Is there anything you want to state or ask about at the present time?

"The Witness: No, your Honor."

(b) All of the questions addressed to petitioner below were within the scope of a duly authorized Judicial Inquiry concerned with his continuing fitness to practice law.

There then began the examination of petitioner. Petitioner refused to answer all the questions asked of him (and these were addressed to his professional conduct) except to acknowledge that he was admitted to practice law in the Second Judicial Department of the Appellate Division of the Supreme Court of the State of New York in December, 1922, on the ground that answers to the questions might tend to incriminate or degrade him. He availed himself of the privilege against self-incrimination nine times at his first appearance. The nature of the questions was as follows (R. 24-27): Was the petitioner a law partner of one Louis Rothenberg; did he know if Louis Rothenberg was presently in Brooklyn or New York City; did he use public adjusters or 10-percenters in his practice; did he pay laymen to solicit cases for him; did he have control of the records of the law firm of Cohen and Rothenberg (composed of the petitioner and said Rothenberg); did he pay individuals any money or moneys for sending cases to him; did he give advances to clients in the conduct of his practice as an attorney; and, did he in the conduct of his practice refer or send clients to doctors.

As may clearly be noted from the record, these questions did not involve petitioner's political beliefs or associations; they did, however, concern the manner in which petitioner practiced law, and involve possible breaches of the Canons of Ethics of the New York State Bar Association. It is to be noted that the Louis Rothenberg about whom petitioner was questioned was one Louis Rothenberg, an attorney, who had been indicted by a New York County Grand Jury on July 28, 1954 for violations of the so-called "ambulance-chasing" provisions of the Penal Law of the State

of New York (Sections 270-a and 270-d), and he pleaded guilty to one count of the said indictment, and was sentenced to prison on June 20, 1955 (R. 49). Petitioner was a law partner of said Rothenberg during part of the period covered by the indictment.

At this initial hearing in the preliminary investigation the rights of the petitioner were scrupulously safeguarded. In fact, at one point petitioner was given the opportunity to halt the hearings in order to consult privately with his counsel (R. 25). It patently appears from the record below that the questions asked petitioner were specific and well within the scope of the Court-authorized inquiry into the area of solicitation and improper handling of personal injury claims.

On May 19, 1959, the petitioner, in response to a subpoena *ad testificandum* and a subpoena *duces tecum* served upon him, appeared for the second time with counsel before the Judicial Inquiry in its preliminary investigation. Some six months and twenty-one days had elapsed since petitioner's first appearance, and he had many hours, days and months to deliberate over the position he had adopted, the oath he had taken when he was admitted to practice as an attorney, and his duty to the court that had admitted him some thirty-seven years previously, and his obligation to be open, frank, candid and straightforward with the court when it inquired into his professional conduct. Petitioner's attitude was the same as it had been more than six months before as is evidenced by the following portion of the record (R. 36):

> "Q. During that period of time have you practiced law individually or at any time did you practice in association with or in partnership with any other lawyer, or lawyers?

The Witness: May I consult with Mr. Price? (His counsel.)

The Court: Of course.

Mr. Price: Assert your privilege. It is my advice to you to assert your constitutional privilege.

The Court: You may consult with Mr. Price at any time during the questioning, in private or otherwise.

The Witness: Thank you.

The Court: Surely.

Mr. Price: I think, in order to expedite it, that I might indicate to him what I desire him to do. I just did.

[fol. 49] The Court: All right.

The Witness: I don't understand you.

Mr. Price: Assert your constitutional privilege.

The Witness: Acting upon the advice of my counsel, your Honor, I respectfully decline to answer the question upon the ground that my answer may tend to incriminate or degrade me, and may tend to expose me to a penalty or forfeiture, and I rely on the privileges accorded to me under the New York State and Federal Constitutions."

Counsel to the Inquiry advised petitioner and his counsel as follows (R. 33):

"I want you to feel completely free to confer at any stage of this interrogation with Mr. Price for such advice as you may wish to obtain from him, and similarly, Mr. Price, I don't want you to hesitate, if you feel at any appropriate time you ought to consult with your client on matters of law or constitutional questions, if any arise, without, of course, interrupting the interrogation proper, I want you, in turn, to feel completely free to confer with your client.

Mr. Price: I might say Judge Baker has very kindly advised me of my rights when I first appeared here with another lawyer, so I think I understand, and I think he understands my position."

And finally, before the questioning commenced, petitioner was told (R. 33):

"Is there any question, Mr. Cohen, that you should like to ask, or any statement you would like to make before proceeding with my questioning?

The Witness: I have no statement to make."

Thus, petitioner was familiar with the purposes of the inquiry, was informed he could make a statement, had his counsel at hand to consult with, and did consult with counsel as he wished. Then the questioning began at this second hearing. The questions, as an examination of the record indicates, were not directed to political associations or beliefs or to the defense of unpopular causes, rather they were addressed to petitioner's conduct of his professional practice insofar as it concerned personal injury claims.

Petitioner, at this second hearing, asserted the privilege against self-incrimination approximately 59 times in answer to questions addressed to his professional conduct for the years 1953-1958, for example: his association with other attorneys in the negligence field (R. 36) whether he used laymen to settle negligence cases for him (R. 48); the number of employees in his law office (R. 37); whether he paid police officers, hospital and/or prison employees for referring negligence cases to him (R. 44); whether he knew or had relationships with eight specific laymen (R. 45-47, 49) (Al Frangello, Tom Connolly, Albert Gaetani, Abe Kaplan, Clifford Bass, Antonio Pecorino, "Smitty", and

Patrick McCormick), and whether he employed so-called "runners" to solicit retainers of personal injury claims (R. 45).

Prior to the putting of the first question to the petitioner at this second hearing, the counsel to the Judicial Inquiry, Mr. Castaldi, questioned the petitioner as to whether he was aware of the purposes of the Judicial Inquiry and why he was summoned, and the petitioner stated concerning the order authorizing the Judicial Inquiry (R. 31): "I read it." And the petitioner's counsel, Mr. Price, a member of the Bar for over thirty years stated (R. 32):

> "We will concede that my client is more or less, as are all lawyers, duty bound to know the scope of the Inquiry ordered by the Appellate Division, and I so concede it."

The record demonstrates that the petitioner had an intimate knowledge of the subject matter inquired into and that he availed himself of the privilege against self-incrimination after due deliberation in order to save himself from whatever consequences might flow from his answers, and not to protect any client's confidence or any freedom of political thought or association.

At one point at the second hearing the petitioner asserted that he had not examined some statements of retainer before the court, which formed the basis of certain questions, and the counsel for the Judicial Inquiry stated (R. 44):

> "Q. Lest there be any questions as to opportunity to look over the statements of retainer, Mr. Cohen, I want to give you full opportunity to examine anything that you wish that is referred to here and made part of this record. In other words, I do not want, frankly,

> a qualified answer, and if you want that opportunity, I shall cooperate."

and petitioner replied (R. 44):

> "No, my answer is the same as indicated, upon my attorney's advice."

The petitioner thus indicated he had no desire to request an adjournment in order to examine the exhibits in accordance with the opportunity afforded.

Apparently, whenever petitioner felt the particular question put would not hurt him, he answered it. For example, he answered questions directed to his personal bank account (R. 51-52), though he refused to answer questions directed to the partnership bank account of petitioner and the aforementioned convicted law partner of petitioner, Rothenberg (R. 52).

There was no effort made at either hearing to conceal anything from the petitioner. Questions were asked about specific cases handled by the petitioner, for example, the *McCormick* case (R. 50), in which petitioner filed a statement of retainer as required by rules of the Court, which bears said Rothenberg's name as the referrer of the client to petitioner, although Rothenberg was in jail at the time of the claimed referral (R. 48-49).

Before the second and last hearing in the preliminary investigation was closed, petitioner was warned as to the possible consequences of his act of asserting the privilege (R. 54-58). Petitioner was also informed that no inferences were being drawn from his assertion of his privilege against self-incrimination (R. 54).

The record below time and time again demonstrates the constant safeguarding of the rights of the petitioner. For

example, this Court itself in *Anonymous 6 and 7* v. *Baker*, 360 U. S. 287 (1959), stated that a witness before the Judicial Inquiry in the preliminary investigation was not entitled to have counsel present in the hearing room with him. However, the petitioner, in the second and most important hearing, was accorded the privilege of having his counsel present with him. Petitioner's counsel stated that petitioner had received fair and lawyer-like treatment from the Inquiry (R. 59):

> "Mr. Price: All right, sir. I want to say that I am very, very grateful to your Honor for your patience and your kindness and your courtesy, and I am sure my client is. And I am very thankful to you for your kindness and patience, Mr. Castaldi, and you, Mr. Caputo. I think we have all tried to act as lawyers."

We believe that a reading of this record below leads inevitably to the conclusion that petitioner was neither cooperative with the Judicial Inquiry nor candid in either of his appearances before said Inquiry.

(c) Appellant was not denied due process by absence of an adversary-type hearing.

As to the petitioner's claim that he was not tried in an adversary manner before a Referee appointed by the court in a disciplinary proceeding, and thereby was deprived of due process, this argument can be disposed of promptly. It was by petitioner's own choice that no trial in the disciplinary proceeding was had, since petitioner raised no issue of fact in his answer to the disciplinary petition below. The petitioner in his answer admitted all the factual allegations and took issue only with the legal conclusion raised by the petition (in paragraph 23 thereof). Therefore, there was no question of fact to be determined by a Referee.

The determination of a disciplinary proceeding without appointment of a trial referee by the court is based upon precedent of long standing. As far back as 1906 in New York in the *Matter of Nathaniel Cohen*, 115 App. Div. 900 (1st Dept.) (1906) (Opinion withheld from publication, but made available to Co-ordinating Committee on Discipline by order of Appellate Division of Supreme Court, dated February 16, 1960), the Appellate Division of the Supreme Court of the State of New York, First Department, rendered its decision in a disciplinary proceeding without ordering a reference. As stated by Presiding Judge O'Brien, in the first paragraph of his opinion for the court in that case:

> "Upon this application to disbar the respondent, Nathaniel Cohen, we have reached the conclusion that as the facts are undisputed, we should dispose of the question presented without a reference."

These rights to confront one's accusers, cross-examine witnesses and call witnesses on one's own behalf arise only in an adversary proceeding such as is had before a Referee who is appointed, where an issue of fact is raised in a disciplinary proceeding, to hear and report whether the evidence adduced before him sustains the charges in the petition.

It is important to bear in mind at all times the distinction in the procedures long prevailing in the State of New York under Section 90 of its Judiciary Law between (a) the preliminary inquiry which is always non-adversary (see People ex rel. Karlin v. *Culkin*, 248 N. Y. 465 (1928)), *and (b) the disciplinary proceeding which is of the adversary-type, except in those instances where the answer of the attorney charged raises no issue of fact to be tried.*

In this case no issue of fact was raised by the answer, which admitted all the factual allegations of the petition.

No appointment of a Referee was necessary since there was no disputed issue of fact upon which he might hear evidence and report with his opinion. It is, therefore, erroneous to refer in this case to the right of petitioner in a disciplinary proceeding to confront his accusers, cross-examine witnesses and call witnesses of his own, since no such rights exist in the preliminary investigation, and a hearing before a Referee in which such rights arise never came into existence by reason of the petitioner's own act in admitting the factual allegations of the petition.

(d) Petitioner's unwillingness to co-operate with the Judicial Inquiry of the court that admitted him was ample ground for disciplinary action, which was not arbitrarily imposed.

Can a state court not protect its dignity and the processes of administration of justice, particularly through proper exercise of its power of licensing attorneys and insistence upon adequate standards of continuing fitness to practice? Can a state court not carry out its responsibility in this area to the public? The disbarment of the petitioner was not by way of punishment for availing himself of the privilege against self-inerimination; rather it was motivated by the necessity of protecting the public by eliminating those unworthy of trust by reason of their refusal to co-operate with the court. The proceedings in the court below had nothing to do with grand jury proceedings, criminal trials or waivers of immunity; they had to do with an inquiry by the court itself into the continuing fitness of one of its officers, particularly as to the manner in which he conducted his practice in the handling of personal injury claims. As the Court below stated in disposing of the cases cited by petitioner, which dealt with grand jury proceedings, criminal trials and waivers of immunity, at (R. 87):

"Appellant's reliance is on *Matter of Grae* (282 N. Y. 428, *supra*); *Matter of Ellis* (282 N. Y. 435, *supra*); *Matter of Solovei* (276 N. Y. 647) and *Matter of Kaffenburgh* (188 N. Y. 49). None of those decisions controls us here. The precise question in *Grae* and *Ellis* (*supra*) was as to whether a lawyer who offered to answer all pertinent [fol. 119] questions could be compelled in such an investigation to waive immunity in advance of questioning. The holding in each case was that a lawyer like every other citizen is constitutionally privileged not to answer damaging questions. The difference between those cases and the present one may seem slight but it is enough to permit a fresh examination (or re-examination) of the question now directly presented. Likewise as to *Kaffenburgh* and *Solovei* (*supra*): Kaffenburgh's refusal to testify was at a criminal trial (so in *Matter of Cohen*, 115 App. Div. 900) and Solovei's was before a grand jury. Our present appellant by declining to answer may have escaped criminal prosecution and punishment, but he could never, while a member of the Bar, escape the other consequences of his flagrant breach of his absolute duty to the court whose officer he was. That breach was in itself 'professional delinquency' (*Ex parte Garland*, 71 U. S. 333, 379) and a valid reason for depriving appellant of his office as attorney."

And the court's opinion below is also dispositive of petitioner's citation of the case of *Grunewald* v. *United States*, 353 U. S. 391, 1 L. ed. 2d 931 (1957), in which case was discussed the assertion of the privilege against self-incrimination in a grand jury proceeding.

Significantly, in not one of these cases cited by petitioner did the attorney when called upon to do so refuse

to answer the questions of the Court when it inquired into his fitness to practice.

The Judicial Inquiry in this case was not an inquiry into unorthodox political beliefs, it was an inquiry into petitioner's solicitation of personal injury claims and the public disrepute such activity brings the Bar of the State of New York and the resultant deleterious effects of such unethical conduct on the Bar.

This Court has time and time again upheld the power of the Court to protect its dignity. As stated by Mr. Justice Frankfurter in the previously cited *Theard* case, at page 281:

> "The court's control over a lawyer's professional life derives from his relation to the responsibilities of a court . . . The power of disbarment is necessary for the protection of the public in order to strip a man of the implied representation by courts that a man who is allowed to hold himself out to practice before them is in 'good standing' so to do."

(e) Decisions of this Court in the *Konigsberg*, *Anastaplo*, and *Schware* cases are not controlling here.

The facts in *Konigsberg* v. *State Bar of California*, 353 U. S. 252, 1 L. ed. 810, 77 S. Ct. 722 (1957), and *In re Anastaplo*, 18 Ill. 2d 182, 163 N. E. 2d 429 (1959) presently before this Court on appeal and the facts in *Schware* v. *Board of Bar Examiners*, cited *supra*, previously decided by this Court, have no relationship to the facts in this case, and any decisions made by this Court regarding those cases should not be determinative of the issue in this case.

The petitioner here, with no substantial defense at hand in a case involving a lawyer's duty to account for his professional conduct, attempts to place himself under the protective cloak of such cases as *Konigsberg*, *Anastaplo* and

Schware, all cited *supra.* The facts, however, in the petitioner's case are not similar to *Konigsberg, Anastaplo* and *Schware,* which deal with political beliefs, political associations, and the defense of unpopular causes and people, while petitioner's case deals with (R. 19) ". . . alleged corrupt and unethical practices, including the practice of solicitation in obtaining retainers . . ." as well as " . . . any other practice involving professional misconduct, fraud, deceit, corruption . . ." *Konigsberg, Anastaplo* and *Schware* deal with alleged arbitrary refusals of admission to the Bar while petitioner's case deals with a Judicial Inquiry, not arbitrarily conducted, into petitioner's continued fitness to practice in view of his lack of candor with the Court as regards the subject of improper handling of personal injury claims. Significantly a search of the records in the *Konigsberg, Anastaplo* and *Schware* cases indicates that none of the petitioners in those cases took the privilege against self-incrimination.

Freedom of political association is a particularly sensitive area, which in our history, since the days of the founding fathers, has been placed under the umbrella of federal constitutional protection, and rightly so. Petitioner, understandably, is desirous of trying to get under that protective umbrella, notwithstanding several fatally defective omissions in the factual record below: first, this case involves no question of freedom of political association (as do *Konigsberg, Anastaplo* and *Schware*); and second, there was due process in all the procedures taken below, which appears crystal clear from the record, in spite of petitioner's claims that he was "threatened" with undisclosed information of professional misconduct. Petitioner was not "threatened" in any way in his two appearances before the court in the preliminary inquiry below. Numerous references to that effect in the brief filed here by petitioner's counsel are without support in the record of the proceedings below.

(This particular claim is here made for the first time, and was not made below.)

Finally, it is clear that this cause of the petitioner involves neither the vitality nor independence of the American bar. No lawyer will be heard to suggest seriously that the price of "fearless advocacy" is a constitutionally protected right to solicit personal injury claims, "chase ambulances," bribe police officers and ambulance attendants, breach the Canons of Ethics and violate the Penal Law of the State of New York, free from disciplinary limits or supervision.

Summary

New York has held in this case that all constitutional privileges inure to the benefit of lawyer and layman alike, and that no rights guaranteed to the lawyer as a citizen may be denied him because he is a lawyer, but that a lawyer may forfeit his privilege to practice law if, as in this case, he fails to account for his conduct as an attorney-at-law and an officer of the court to a Judicial Inquiry ordered by the Court to investigate the conduct of attorneys in a field of law practice fraught with abuses. There is nothing arbitrary in such a holding by a State court.

The petitioner was not threatened, he was not faced by evidence given by unknown accusers, the subject matter of the Inquiry was not kept secret from him. The preliminary inquiry in which the petitioner appeared was not that of a grand jury, or a criminal trial; rather it was the Court itself inquiring into his continuing fitness to be a member of the Bar and an officer of the Court. This Court itself has described attorneys as officers of the Court. See *Theard* v. *United States*, previously cited. As Judge Cardozo said in the *Matter of Rouss*, 221 N. Y. 81 (1917), cert. denied 246 U. S. 661 (1918), at pages 84 and 85:

"Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards (*Selling* v. *Radford*, 243 U. S. 46; *Matter of Durant*, 80 Conn. 140, 147). Whenever the condition is broken, the privilege is lost. To refuse admission to an unworthy applicant is not to punish him for past offenses. The examination into character, like the examination into learning, is merely a test of fitness. To strike the unworthy lawyer from the roll is not to add to the pains and penalties of a crime. The examination into character is renewed; and the test of fitness is no longer satisfied. For these reasons courts have repeatedly said that disbarment is not punishment."

No one can successfully urge that a lawyer's obligation to his profession does not include a duty of frankness, straightforwardness and candor to the courts at all times, and, in particular, when the court is inquiring into the professional conduct of its own officer for the purposes of determining his continuing fitness to exercise the privilege to practice which the court alone granted to him. As stated by Sharswood, in *Professional Ethics* (1854), pages 168, 169:

"No man can ever be a truly great lawyer, who is not in every sense of the word, a good man. . . . There is no profession in which moral character is so soon fixed as in that of the law; there is none in which it is subjected to severer scrutiny by the public. It is well that it is so. The things we hold dearest on earth—our fortunes, reputations, domestic peace, the future of

those dearest to us, nay, liberty and life itself, we confide to the integrity of our legal counsellors and advocates. Their character must be not only without a stain, but without suspicion. From the very commencement of a lawyer's career, let him cultivate, above all things, truth, simplicity and candor; they are the cardinal virtues of a lawyer."

When a court addresses to a lawyer some sixty specific questions, all of which are concerned with the conduct of his professional practice and impinge squarely on the issue of his continuing fitness to exercise his license, his refusal to answer, notwithstanding his conceded constitutional right to do so, indicates an election to defy the historic power of the court so to inquire. No lawyer may thus set himself above the authority of the court. No lawyer may say, in effect, to the court that admitted him: "You may not compel me to account for my professional conduct in a properly constituted Judicial Inquiry." This attitude is not consistent with the high duty a lawyer owes to the court as its officer. By his own choice, he places himself in a position where he is unworthy of the trust of the court and the public.

There are important legal issues involved in this appeal, but underlying them, and of infinitely greater importance, are the moral issues involved, namely, what standards of professional conduct shall prevail with respect to lawyers generally, and whether the high duty to answer with respect to one's professional conduct in the circumstances in this case is to be avoided without consequence as to professional status, by use of the conceded right to take the privilege against self-incrimination. If the petitioner in this case is right in his contention, then the respect and confidence in which the Bar is held by the public is headed downward at a precipitous rate and no man knows the ultimate depth of that decline.

As Chief Judge Cardozo wrote in the landmark opinion in the *Karlin* case (cited *supra*) page 480, that

> "If the house is to be cleaned, it is for those who occupy and govern it, rather than for strangers, to do the noisome work."

The question is: Were these words mere rhetoric from the pen of a juridical scholar, entombed in a case report gathering dust upon the shelves, or are they to become a reality by being implemented and revitalized by a current court decision? The highest court of record in the State of New York has now given its answer in a vigorous and cogently reasoned decision. No valid ground has been urged for disturbing it.

CONCLUSION

This appeal should be dismissed for lack of a substantial federal question, or the judgment of the court below should be affirmed.

Dated: September 15, 1960.

Respectfully submitted,

HENRY WEINER,
Attorney for David W. Peck, Jacob Burns and Harry Lesser, as members of the Co-ordinating Committee on Discipline created by the Association of the Bar of the City of New York, the New York County Lawyers' Association and the Bronx County Bar Association

ALLEN HARRIS
DANIEL J. MCMAHON
With him on the brief

APPENDIX I

New York Law Journal—December 3rd and 4th, 1959
Work of the Co-ordinating Committee on Discipline

By Jacob Burns

[The accompanying article is the text, in greater part, of an address delivered at the recent forum of the New York County Lawyers' Association. Mr. Burns is chairman of the Association's Committee on Discipline and a member of the Co-ordinating Committee on Discipline.—Editor.]

The Co-ordinating Committee on Discipline was created in October, 1958, as a joint effort on the part of and pursuant to a plan adopted by the Appellate Division in the First Judicial Department, the Association of the Bar of the City of New York, the New York County Lawyers' Association and the Bronx County Bar Association for the purpose of continuously surveying and investigating practices of attorneys and others in the handling of personal injury claims.

In the past, large scale publicized judicial inquiries into and investigations of the unethical practices of attorneys in soliciting and securing retainers in personal injury cases have been conducted sporadically every ten or fifteen years. Such investigations, however, have not effectively prevented a resumption of these practices after the clamor of the investigations has subsided. The publicity attendant upon such investigations which usually involve but a few unscrupulous lawyers leaves in the minds of the public an unwarranted feeling that the unethical practices disclosed permeate throughout a large sector of the members of the Bar. The impression thus given is not a fair reflection of the conduct of the Bar. For these reasons it was determined that the Bar and the public would be better served if

a permanent organization were set up whose function it would be to survey continuously the practices of attorneys in the negligence field and conduct investigations thereof. Thus, in addition to initiating disciplinary actions on specific charges against those who the committee believes have been guilty of professional misconduct, the mere fact that such a committee is constantly at work would in and by itself have a preventive and prophylactic effect.

To implement the work of this committee, the justices of the Appellate Division on December 15, 1958 amended Rule V of the special rules regulating the conduct of attorneys giving the Co-ordinating Committee on Discipline the right to secure subpoenas in conducting preliminary investigations of professional misconduct and empowering it to take and transcribe the evidence of witnesses who may be sworn by any person authorized by law to administer oaths. These subpoenas may issue for the attendance of witnesses as well as for the production of books and papers before the committee.

The plan, which was the basis of the formation of the Co-ordinating Committee on Discipline, provides that this committee shall be composed of the chairman of the Grievance Committee of the Association of the Bar of the City of New York, the chairman of the Committee on Discipline of the New York County Lawyers' Association and the chairman of the Grievance Committee of the Bronx County Bar Association. Thus the committee is presently composed of former Presiding Justice David W. Peck, who is its chairman, representing the Association of the Bar of the City of New York; Joseph A. Brust, representing the Bronx County Bar Association, and myself representing the New York County Lawyers' Association. The plan also provides that the operation of the plan and the work of the committee shall be conducted under the overall supervision of the Presiding Justice of the Appellate Division. The aid

and co-operation which this committee has received from its very inception and continues to receive from the Presiding Justice Bernard Botein has been most invaluable, and his interest in the work of the committee has contributed in great measure to the fulfillment of the tasks undertaken by it.

On February 3, 1959, pursuant to the provisions of section 90 of the Judiciary Law of the State of New York and in the exercise of the inherent powers of the Appellate Division, the justices of that court authorized and directed the Co-ordinating Committee on Discipline to conduct a continuous study and investigation of the practices of attorneys and others in the negligence field.

The headquarters of this committee are located at the Appellate Division Courthouse, at Twenty-fifth Street and Madison Avenue, in Manhattan.

When this work first started, the committee had but a general idea of the scope and extent of abuses which exist in the negligence field here, but as we delved into matters and gathered information from various sources available to us it soon became apparent that we had a job on our hands of no small proportions, although the percentage of attorneys involved, compared to the total number practicing here, is very small.

We now have three paid attorneys on our staff devoting their full time to this work, which often includes Saturdays and Sundays. We were very fortunate to obtain as our chief counsel Henry Weiner, who in the past has been in public service and whose ability, temperament and high regard for the dignity of our profession makes him an invaluable member of our staff and one in whom the members of the Bar can have confidence, and one who is possessed of a deep sense of fair play.

Mr. Weiner is assisted by attorneys Daniel J. McMahon and Allen Harris. Mr. McMahon has also in the past been in public service and in investigative work, while Mr. Harris

recently resigned his position as assistant district attorney in the frauds bureau in New York County to take the post with the legal staff of the committee.

We also have a number of full-time investigators, clerks and other office personnel, and at hearings we engage the services of official court reporters.

Although this committee actually started its work only in February of this year, we have learned a lot and have done much in this short space of time. It has not been very pleasant to learn the things we learned, and it is equally not very pleasant to have to do the things we must.

Now what have we learned? I can but briefly refer here to a few of the highlights.

1. One of our tasks is continuously to examine, survey and study statements of retainer and closing statements required to be filed by attorneys pursuant to the rules of our Appellate Division relating to the conduct of attorneys. In this connection we have found the following:

(a) A number of attorneys have not bothered to file either statement in many of their cases.

When we confronted these attorneys with this fact they readily admitted their dereliction, but tried to explain it away in various ways. Some said it must have been overlooked by their secretaries, and some have said that a number of the cases have been dropped by them after investigation, and in those cases they have not filed statements of retainer. Now, what did they do in these latter cases: They usually first obtained a retainer from the client, then determined the name of the insurance company covering the claim, got the police and hospital record, if any, wrote for the copy of the motor vehicle report, if it was an automobile accident, tried to get a medical report, and often wrote a claim letter to the prospective defendant. After handling, and sometime mishandling, the case for thirty,

sixty or ninety days or more, if they decide that the insurance company is one of the "tough" ones, or that the liability is hard to prove, or that for some other reason the case is not likely to be settled quickly and without difficulty —they give the case back to the client. Is an attorney in such a situation or in comparable situations relieved of the obligation to file statements of retainer? I am sure that all will agree that he is not.

What hurts even more in such a situation is that the unfortunate client's case has lost much or all of its value, because the client will probably decide to drop the matter, or, if he does not would he not have a very difficult time finding another lawyer who would want to pick it up from there?

Some attorneys have attempted to justify their failure to file statements of retainer on the ground that there was no written retainer. A retainer need not be in writing. When an attorney undertakes to represent a client in a negligence case on an understanding, actual or implied, that his fee, if any, would be contingent upon a successful conclusion or disposition of the case, he should file a statement of retainer within the time required, even though the actual amount of or percentage of the contingent fee is not then agreed upon.

(b) In those cases with respect to which attorneys have not filed statements of retainer, they invariably also fail to file closing statements after the cases are settled. But in the few cases where attorneys have filed a closing statement, but not a corresponding statement of retainer, when the matter was called to their attention by the clerk of the Appellate Division, their explanations were that at the outset they were not planning to charge a fee, but after the case was settled there was a change of heart, or the client insisted on paying a fee. No one is deluded with such contentions.

(c) Attorneys are required to indicate in their statements of retainer whether or not the client was previously known to the attorney, or to give the name and address of the person referring the client to the attorney or of anyone who had any connection with such referral, and to state such connection. This requirement applies only where the attorney was retained or associated in any way in five or more personal injury or property damage claims in the previous calendar year.

Some firms of attorneys who think they can get around this requirement will file some statements of retainer in the individual names of their associates or partners to break up the total number of cases so that no one of them has five or more cases a year. This method of attempting to get around the rule is really not very effective.

When it comes to mentioning on the statement of retainer the names and addresses of persons who referred the clients to the attorney, this is what is often found:

If it is a doctor, his designation of "Dr." is left off.

If this doctor refers a number of cases to the attorney, the doctor's address is sometimes given as his office address, and other times as his home address.

If it is an insurance broker, his home and not his business address is usually given.

If it is an owner or employee of an automobile repair shop, his home address is usually given.

None of these variations really fools anybody, but they don't sit well with the committee. Straightforwardness is the best policy.

(d) Testimony of attorneys who specialize in adjusting or settling accident cases for other attorneys, and who work on a contingent fee basis (averaging between 5 and 10 per cent. of the gross settlement) reveals that these attorneys in the main do not file statements of retainer nor closing statements on such cases.

My interpretation of Rule IV-A is that every attorney who is to receive compensation on a contingent fee basis in a personal injury case is required to file a statement of retainer, and that would seem to include attorney-adjusters. There certainly is no question of their obligation to file closing statements, because the provision of subsection (d) of Rule 4 specifically sets forth that:

> Every attorney, upon receiving, retaining or sharing any sum as contingent compensation in any claim or action subject to this rule, * * * within fifteen days after such receipt, retention or sharing shall serve in the manner required by Rule 4B on the client and file in the Office of the Clerk of the Appellate Division, a closing statement * * *.

Since Rule 4 permits the serving and filing of joint closing statements where more than one attorney receives, retains or shares in the contingent compensation, it would permit the attorney-adjuster to comply with this rule by joining in the execution of the closing statement prepared by the attorney of record.

Where an attorney engages the services of an attorney-adjuster to assist in the settlement of a case, and then pays the latter a fee out of the total fee charged the client, and does not reveal that fact and the amount of such payment in the closing statement, he, the original attorney, has not fully complied with the rule, which, among other things, requires the itemization of any amounts paid by the attorney to others, listing their names and addresses.

(2) With respect to Rule IV-F of the special rules relating to the conduct of attorneys, it was found that some attorneys either do not know of the existence of this rule or they are deliberately ignoring it. This rule requires attorneys in personal injury or property damage cases to "preserve the pleadings and other papers pertaining to

such claims and causes of action and memoranda of the disposition thereof for the period of at least five years after any settlement or satisfaction of the claim or action or judgment thereon, or after the dismissal or discontinuance of any action brought."

In several situations investigated, we found attorneys for the claimants stripping their files soon after a case is settled to the point where there is practically nothing in the files except, possibly, a copy of the release and some memoranda as to the disposition of the case, and very meager pleadings, if any.

The fact that the files take up a good deal of room is no excuse.

Failure to preserve the required records may impede investigation in a particular case, but in the final analysis it does not really work to the advantage of the attorney who destroys records for reasons sufficient unto himself.

(3) We have looked into the matter of the activities of so-called "lay" adjusters. Based on our investigations we find that these are persons who, in many cases, have over the years established contacts with insurance companies, and have built up considerable experience in negotiating settlements, as intermediaries between the attorney for the claimant and the insurance company. They are usually engaged by the attorney on a contingent fee basis and receive from the attorney out of his fee approximately 5 to 10 per cent. of the amount of the gross settlement.

There are to-day not many of these gentlemen remaining in business.

This practice in effect, constitutes the splitting of fees between an attorney and a lay person, which is in violation of canon 34 of the Canons of Professional Ethics of the American Bar Association and of the New York State Bar Association, which provides that:

"No division of fees for legal services is proper, except with another lawyer, based upon a division of service or responsibility."

Further when a lay adjuster negotiates with an insurance company the settlement of a pending claim or action for damages for personal injuries he usually discusses with insurance company representatives questions of legal liability involved in the claim or action, and he thereby in effect practices law, which is prohibited to persons other than those duly admitted to practice law.

Also, in an early opinion of the New York County Lawyers' Association's committee on professional ethics condemning the practice of lawyers dividing fees with lay adjusters, that committee went on to say:

> It is, of course, fundamental that the lawyer cannot with propriety employ anyone to use personal influence based merely upon acquaintance or other contacts, as distinguished from services of constructive character free from such influence.

(4) With respect to the matter of disbursements and expenses of litigation:

Canon 42 of the Canons of Professional Ethics of the American Bar Association and of the New York State Bar Association provides that:

> A lawyer may not properly agree with a client that the lawyer shall pay or bear the expenses of litigation; he may in good faith advance expenses as a matter of convenience, but subject to reimbursement.

In the field of negligence we find that this canon is constantly ignored. It is common practice for lawyers in personal injury cases to make all disbursements and pay all expenses of litigation without any expectation or require-

ment of being reimbursed in the event there is no recovery; in many cases where there is recovery the lawyer absorbs the disbursements and expenses.

This practice is tantamount to the financing of lawsuits by lawyers. In some cases lawyers actually advance moneys to injured clients, at or shortly after retainer, and although they may consider such advances as loans and may take promissory notes therefor, one cannot escape the conclusion that such practices often constitute part and parcel of the ambulance chasing pattern. Lawyers should not become joint venturers in law suits.

In an opinion of the committee on professional ethics of the Association of the Bar, it is stated that "In his own profession the lawyer is a counselor and an advocate; he must be neither a banker nor an insurer."

As to doctors' bills, it is one thing for an attorney to advance the cost of engaging an expert for an examination and report, with the view of having the expert testify at trial, but it is entirely improper for an attorney to pay the treating doctors' bills.

Our investigations revealed many instances of attorneys sending clients to favored doctors for treatment, often when a client says that he was merely shaken up. For a pain in the shoulder or back or elsewhere, whether the pain is real or imaginary, the doctor will give diathermy or heat treatments, and will have the patient make a half dozen or more visits. He doesn't ask the patient to pay for these visits. But the lawyer gets a report and a substantial bill in the name of the client. Eventually, if the case is settled, the lawyer pays the doctor's bill out of his fee, and more often than not the payment is considerably less than the amount of the bill, and sometimes it is even made in cash. The client gets his full share of the settlement funds. The closing statement, where one is filed, does not reveal the payment to the doctor, it seems to get lost in thin air.

But even worse than that is this illustration of the kind of thing that has gone on:

A client comes to the lawyer's office after being involved in a minor accident. He says he was shaken up. No doctor or ambulance was summoned to the scene, and the client did not seek any medical treatment, but rather continued about his business and lost no time from work. The attorney sends the client to a doctor friend. The doctor writes a comprehensive report indicating extensive injuries to the patient, making it appear the patient underwent extensive treatment. The doctor's report reads something like this:

(1) Whiplash injury to the neck and cervical spine.

(2) Contusions and abrasions of right shoulder.

(3) Ecchymosis and edema of the right knee.

(4) Bursitis of the right shoulder.

(5) Sprain of back in the lumbo-sacral area.

Total medical bill, $132.

For the treatment of all these "serious" injuries the client visited the doctor just once, perhaps for fifteen minutes or less.

And we have turned up situations like the illustration just given where the client never even saw the doctor who made the report and rendered the bill.

In a number of cases investigated, we found that the attorney who is usually present when a physical examination of his client by the insurance doctor takes place will say to the doctor that "X-rays were negative for fracture." This presupposes and constitutes a representation that X-rays were actually taken, when, in fact, the testimony of the claimants in many such cases before the committee disclosed that no X-rays were taken.

Instances have been found where the same client had two or three automobile accidents over a period of three or four years. The insurance companies in the later accidents received the identical doctor's report and/or auto repair estimate used in the first accident. There is one thing that can be said for this procedure, it saves time, effort and money, but perhaps there were other reasons.

(5) Another facet in the general pattern indulged in by a small group of lawyers in presenting claims to insurance companies is one having to do with the claim of loss of earnings of the injured client.

To obtain a proper offer of settlement the lawyer feels he must show not only a good sized medical bill, but also that the client lost time from his employment and was not paid his salary during such absence. It appears important to show sizeable special damages, also because many insurance company adjusters have developed a formula for a quick evaluation of a case by taking the total special damages claimed and multiplying it by three, four or five, or some such number.

In many minor accidents there is no loss of time from employment. However, some have found a way to correct this "deficiency" in the claim.

It's no problem to get a few letterheads from a friend in business. A statement is typed up on the letterhead that the client is employed by that firm in some capacity, and that he lost several weeks time and wages due to a certain accident. When we question the client, he knows nothing about it, since he never worked for that firm. We subpoena the alleged employer and his payroll records, and it is readily admitted that the client never worked for that firm, and the employer asserts he never wrote the letter and doesn't know how the letterheads were obtained. The lawyer says he got the letter from the client. It becomes quite a mystery.

Then there is the loss of earnings letter written on the stationery of a firm of which the injured party is an owner or partner. He draws $200 or more a week from the business and did not lose any pay, because he gets paid whether he works or not. But the letter says he is employed as a clerk at $75 per week and lost four weeks' time and pay. This has a bit of a different twist to it, because it tends to minimize the special damages rather than magnify them. But there is a purpose to this madness.

We even found situations where the alleged employer firms were non-existent.

It is just as improper to prepare a bill of particulars containing false statements as to the extent of injuries, medical expenses and loss of earnings, even though the bill of particulars is signed by the client. We find that clients usually will sign any document which the attorney asks them to sign.

(6) We have found a number of situations where attorneys resort to improper procedures in effecting settlements of infants' claims.

One type of undesirable practice is that of settling infants' claims without obtaining a compromise order, where the amount of settlement is small. No doubt there is considerable expense and trouble in getting a doctor's report, preparing affidavits and the order, and taking the time to appear before a judge with the infant in a two or three hundred dollar settlement; but the existing law requires this procedure for the infant's protection, and lawyers should not take it upon themselves to change the law, even though some insurance companies co-operate by accepting a general release from the infant's parent. Besides, the attorney takes the unnecessary risk of being held responsible should the injuries later develop to be more serious than at first believed.

(7) The matters which have been touched upon are those varieties of abuses in the negligence field which were found to exist with some regularity among a limited number of attorneys investigated. There are, however, other specific instances of professional misconduct, disclosed by the investigations, which are presently under scrutiny and which differ from those which have been mentioned. It would be unwise for me to give details of these at this time. It is believed, however, that only a few lawyers are involved.

Also, we are presently looking into evidence of alleged large scale "chasing" of serious accident cases—and because the investigation is still pending details cannot be given at this time of the devious methods and schemes allegedly applied in this despicable business.

(8) When the committee requests a lawyer to appear before it, there is no implication necessarily to be made therefrom that he is being charged with any impropriety. The effectiveness of our work depends on information. We may learn a fact from one source, and we may believe that a particular lawyer can be of help in furnishing us with other pertinent data. Our work entails not only seeking out wrong-doing, but also preventing it from occurring. One phase of our work requires us to ascertain present practices and to recommend to the Appellate Division in what respects amendments to rules, or new rules, can improve the practices or eliminate undesirable practices.

We need the co-operation of those we call on. We may not get it at all times. It only means that we have to work a little harder, a little longer. We have a lot of patience; also we have determination.

We are not interested in proving crimes against anybody. That is not our function. We are merely required to seek out the "bad eggs" in our profession and call them to the attention of the Appellate Division. The smell of one

bad egg in a basket can give the erroneous impression that the whole lot is no good.

The members of the Bar who specialize in negligence practice must bear in mind that widespread abuses in the field of automobile accident claims tend to increase insurance premiums, and, if the situation continues, public indignation may eventually force legislation which would take these claims out of the hands of the courts and, for all practical purposes, out of the hands of lawyers, and make every vehicular accidental injury compensable, regardless of negligence, through a determination by a board or commission comparable to the manner in which workmen's compensation cases are handled. Is this what the negligence Bar wants? I think not.

We need to uphold the dignity of our profession. We must nurture and maintain public reliance on the integrity of the legal profession. Some lawyers believe that their first duty is to the client. I do not believe this is so. I think that a lawyer's first duty is to the courts of which he is an officer; his second duty is to his profession whose integrity and dignity he must always maintain; his third duty is to his own self-respect as a member of the Bar; and then comes the duty to protect the best interests of his client and that only by honest and sincere effort.